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9 *BRUGNARA PROPERTIES VI*

10 UNITED STATES BANKRUPTCY COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13 In re  
14 BRUGNARA PROPERTIES VI,  
15 Debtor.  
16 Federal ID No. 91-2003281

Chapter 11 No. 10-33637

**SECOND AMENDED DISCLOSURE  
STATEMENT FOR CHAPTER 11 PLAN  
OF REORGANIZATION  
(Dated May 11, 2011)**

1 I. DEFINITIONS

2 A. Defined Terms

3 The following definitions apply in this Plan or  
4 Reorganization (the "Plan") and the accompanying Disclosure  
5 Statement. Certain additional terms are defined throughout the  
6 Plan and Disclosure Statement.

7 "Case" means this Chapter 11 case filed by the Debtor on  
8 September 17, 2010, and pending in this Court as Case No. 10-  
9 33637.

10 "Cash" means cash and cash equivalents, including checks and  
11 other similar forms of payment.

12 "Code" means the Bankruptcy Code as found at Title 11 of the  
13 United States Code, as applicable to this Case.

14 "Confirmation" means entry of the Confirmation Order.

15 "Confirmation Order" means the Court's order confirming the  
16 Plan under Code section 1129 and Rule 3020(c).

17 "Court" means the United States Bankruptcy Court for the  
18 Northern District of California or, in the event such court  
19 ceases to exercise jurisdiction over the Case, such court or  
20 adjunct thereof which thereafter exercises jurisdiction over the  
21 Case or any aspect of it.

22 "Debtor" means Brugnara Properties VI, the debtor in this  
23 case.

24 "Disbursing Agent" means Brugnara Properties VI or any other  
25 person, entity or entities designated by the Reorganized Debtor  
26 to act in such capacity for the purpose of disbursing payments  
27 provided for in the Plan, and to assist in carrying out the terms  
28 of the Plan.

1       **"Effective Date"** means the first business day to fall at  
2 least 11 days from the date of Confirmation.

3       **"Filing Date"** means September 17, 2010.

4       **"Final Order"** means an order or judgment of the Court or the  
5 District Court as to which: a) the time for appeal has expired  
6 and no notice of appeal has been timely filed, or b) any appeal  
7 or petition for writ that has been filed has been withdrawn,  
8 dismissed or determined leaving the Court's order intact, and  
9 which is not subject to further review by appeal or otherwise.

10       **"Non-classified Claims"** means Claims of the type described  
11 in Article V of the Disclosure Statement.

12       **"Plan"** means the Debtor's Plan of Reorganization submitted  
13 along with this Disclosure Statement, as may be amended in the  
14 future.

15       **"Post Petition"** means events occurring or matters arising  
16 after the Filing Date and not otherwise deemed to have occurred  
17 or arisen before then.

18       **"Pro rata"** means proportionately so that the ratio of the  
19 consideration distributed on account of an Allowed Claim in a  
20 class or other defined group of claims to the consideration  
21 distributed on account of all Allowed Claims in the class or  
22 group is the same as the ratio of such Allowed Claim to all  
23 Allowed Claims in the class or group.

24       **"Real Property"** means Debtor's real property located at 224  
25 Sea Cliff Avenue, San Francisco, California.

26       **"Reorganized Debtor"** means Debtor on and after the Effective  
27 Date of the Plan.

28

1       **"Retained Claims"** means all claims that Debtor had as of the  
2 Filing Date, all claims that could be asserted by a trustee in  
3 the Case immediately before Confirmation (including claims  
4 arising under Code sections 362, 506, 510, 542, 543, 544, 545,  
5 547, 548, 549, 550, or 553 or otherwise), all claims listed in  
6 Debtor's Bankruptcy Schedules, including the claims against Jorei  
7 Enterprises, LLC and all claims that arose in favor of the Estate  
8 after the Filing Date, except as any of the foregoing claims have  
9 been expressly and explicitly waived in writing with Court  
10 approval.

11       **"Rules"** means the Federal Rules of Bankruptcy Procedure as  
12 applicable to the Case.

13       **"UST"** means the representative of the Office of the United  
14 States Trustee with responsibility for monitoring developments in  
15 the Case.

#### 16       **B. Undefined Terms**

17       Terms used herein but not defined by the Plan or Disclosure  
18 Statement, but which are defined by the Code, have the meanings  
19 given to that term in the Code unless the context of the Plan  
20 clearly indicates or requires otherwise.

#### 21       **C. Rules of Construction, Interpretation and Time**

22       In the event of any inconsistency between the Plan and the  
23 Disclosure Statement, the provisions of the Plan are controlling.  
24 The rules of construction set forth in Code section 102 shall  
25 apply to the Plan and the Disclosure Statement. In computing any  
26 period of time prescribed or allowed by the Plan, the provisions  
27 of Rule 9006(a) shall apply.

#### 28       **D. Applicable Law**

1 Except insofar as federal law applies or the Plan  
2 specifically provides otherwise, the interpretation,  
3 implementation and enforcement of the Plan are governed by  
4 California law.

#### 5 **E. Integration and Modification**

6 Except as expressly provided otherwise in the Plan, (a) the  
7 Plan and any exhibits to it constitute the entire and complete  
8 agreement among the parties with claims or interests in Debtor's  
9 estate with respect to the matters addressed and transactions  
10 contemplated in the Plan, superseding any prior or  
11 contemporaneous oral or written agreements or representations  
12 concerning such matters or transactions, and (b) the rights or  
13 obligations contained in the Plan can be modified only (i) by a  
14 writing signed by the party to be held to the altered term or  
15 (ii) under Code Section 1127, if the modification has a material  
16 and adverse effect on the rights or remedies of nonsignatories.

### 17 **II. BACKGROUND**

18 Debtor is a California corporation. Debtor's only asset is  
19 its ownership of real property located at 224 Sea Cliff Avenue,  
20 San Francisco, California (the "Real Property"). The Real  
21 Property is a single family residence and is the home of Debtor's  
22 principal, Katherine Brugnara, her husband and four children.

23 Debtor acquired title to the Real Property in 2001 for  
24 \$8,000,000 and invested approximately \$2,000,000 in capital  
25 improvements. The Real Property was appraised in August 2008 at  
26 a value of \$17,800,000. Debtor believes that the value of the  
27 Real Property has declined since that appraisal. Debtor's  
28 current estimate is that the Real Property is worth between \$14

1 million and \$15 million based on a current valuation by Mark  
2 Levinson of Sotheby's International.

3 The secured debt against the Real Property consists of: (i)  
4 property taxes owed to the City and County of San Francisco; (ii)  
5 a first deed of trust in favor of Wachovia/Wells Fargo  
6 ("Wachovia"), which has filed a proof of claim in the sum of  
7 \$7,254,033.19; and, (iii) a second deed of trust in favor of  
8 Jorei Enterprises, LLC ("Jorei"). The principal amount of the  
9 debt to Jorei is \$5,000,000; it arises out of a loan made by  
10 Jorei to Brugnara Properties I, LP ("Brugnara I") and originally  
11 secured against an office building owned at the time by Brugnara  
12 I at 351 California Street, San Francisco, California. This  
13 Debtor was a guarantor of the loan by Jorei to Brugnara I.

14 During a prior Chapter 11 case by Debtor, No. 09-30038 (the  
15 "Prior Case"), a settlement was reached between Debtor and Jorei.  
16 This Court approved the settlement on June 3, 2009. With respect  
17 to this Debtor, the settlement provided in pertinent part for: a  
18 reduction of Jorei's secured claim from \$11,350,000 (plus accrued  
19 interest) to \$5 million; provision that the Jorei claim would be  
20 due in full in five years, but no interest would accrue and no  
21 payments would be due for the five years as long as Debtor did  
22 not default under its agreement with Jorei and was able to cure  
23 any default to Wachovia.

### 24 **III. SIGNIFICANT PRE-BANKRUPTCY EVENTS**

25 The Prior Case was dismissed on August 27, 2009, upon  
26 Debtor's motion (which was originally denied but after  
27 reconsideration, granted). One of the problems for Debtor's  
28 remaining in the earlier bankruptcy was its inability to

1 negotiate with Wachovia for modification of the loan secured by  
2 the first deed of trust against the Real Property.  
3 Following the dismissal of the Prior Case, Debtor was prepared to  
4 go back to Wachovia and resume negotiations for modification,  
5 which the bank would not discuss during the pendency of the Prior  
6 Case.

7 Those efforts were to be led by Luke D. Brugnara. Mr.  
8 Brugnara's negotiations were underway but not concluded when in  
9 June 2010, following his having suffered a federal criminal  
10 conviction, Mr. Brugnara was incarcerated. Following the  
11 conviction, in cases No. CR 08-0222-wha-MAG and CR 08-0236-mmcc-  
12 MAG, each entitled *United States of America vs. Luke Brugnara*  
13 (collectively, the "Criminal Cases"), Mr. Brugnara was originally  
14 ordered to surrender to a federal facility pursuant to his  
15 sentence on August 30, 2010. However, in June 2010, Mr. Brugnara  
16 was ordered to report to a federal facility earlier and he did so  
17 on June 15, 2010.

18 At the present time Mr. Brugnara is serving his sentence in  
19 a federal correctional facility in Texarkana, Texas. Debtor,  
20 through Katherine Brugnara, who became the principal of the  
21 Debtor very suddenly in 2010 upon Mr. Brugnara's radical change  
22 in circumstances, is informed that Mr. Brugnara will be released  
23 from federal custody as early as June 2011, or no later than  
24 December 2011.

25 Mrs. Brugnara attempted to pick up the thread of discussions  
26 with Wachovia regarding a modification, but without success. She  
27 experienced the frustration that is common knowledge regarding  
28 loan modifications, and before she could make any headway with

1 Wachovia, the bank recorded a notice of default and then  
2 published a notice of a trustee's sale for its deed of trust. To  
3 stop that trustee's sale, this new Chapter 11 case was filed.

4 With Mr. Brugnara's sudden departure from the Bay Area and  
5 his subsequent residence under circumstances that preclude all  
6 but the most limited communication between him and Katherine  
7 Brugnara, Mrs. Brugnara has been hard-pressed to deal with not  
8 only the disruption to the lives of her and her children, but, to  
9 the point here, with the legal issues regarding Wachovia's loan.  
10 Mrs. Brugnara has also been put in a position where, although she  
11 has, under the community property laws, ownership of significant  
12 joint assets with Luke Brugnara, she has no effective access to  
13 those assets other than the Real Property owned by the Debtor.

14 Mrs. Brugnara is informed that the United States Government,  
15 in a pre-sentencing report ("PSR") furnished to the Court in the  
16 Criminal Cases, ascertained that Mr. Brugnara's net assets, of  
17 which Mrs. Brugnara owns an undivided 50% community interest, are  
18 in excess of \$20,000,000.00. (Mrs. Brugnara has been attempting  
19 to obtain a copy of the PSR and, if and when she is able to  
20 obtain a copy and subject to privacy issues that may pertain,  
21 will provide an appropriately redacted copy it to the UST.)

22 Mr. Brugnara's sudden absence and the consequent limitations  
23 on her access to the community funds owned by Mr. and Mrs.  
24 Brugnara contributed to the filing of this Chapter 11 case; the  
25 ability to obtain access to those funds upon Mr. Brugnara's  
26 release from custody will provide the means to bring any and all  
27 arrearages current on the Wachovia loan and to pay any  
28 outstanding tax claims of the City and County of San Francisco.



1                   **IV. SIGNIFICANT EVENTS IN THE CHAPTER 11 CASE**

2           **A. Administrative Matters:**

3           1.   **Appointment of Responsible Individual:** On October 19,  
4 2010 the Court entered its Order Designating Responsible  
5 Individual. By this Order Katherine Brugnara, the president of  
6 the Debtor, was appointed as the individual responsible for the  
7 duties and obligations of the Debtor during the Case.

8           2.   **Appointment of Counsel:** On November 4, 2010, the Court  
9 approved the appointment of the Law Office of Joel K. Belway as  
10 Chapter 11 counsel for the Debtor over the objection of the UST.

11           3.   **Meeting of Creditors:** The meeting of creditors held  
12 pursuant to Code section 341 was held on October 26, 2010. The  
13 meeting was conducted by the Office of the U.S. Trustee.

14           **B. Other Matters:**

15           1.   **Claims Bar Date:** The Court established January 24,  
16 2011 as the deadline for filing pre-petition (non-governmental)  
17 claims against the Debtor. Governmental claims must be filed by  
18 180 days from the Filing Date.

19           2.   **Monthly Operating Reports:** Debtor is in the process of  
20 bringing current its monthly operating reports since the  
21 petition.

22           3.   **Insurance:** Debtor is informed that insurance placed  
23 against the Real Property by Wachovia sufficiently insures the  
24 cost of replacing the improvements to the Real Property. Debtor  
25 is informed that the amount of current insurance continues the  
26 amount of coverage that was in place before the filing of this  
27 Chapter 11 case.

28

1           4.     **Corporate Tax Returns:** Debtor is in the process of  
2 filing all corporate tax returns that are due.

3           5.     **Claims Against Debtor's Estate:** Debtor's schedules  
4 reflect secured claims of approximately \$11,140,000, and  
5 unsecured claims of \$1,000. Wachovia was scheduled with a  
6 secured claim of \$6,140,000; it has filed a claim for  
7 \$7,254,033.19. The City and County of San Francisco ("City") has  
8 filed a claim in the amount of \$337,964.63 for taxes secured by  
9 the real Property in the sum of \$337,964.63 for real property  
10 taxes for tax years 2008-09, 2009-10 and 2010-2011. The  
11 California Franchise Tax Board ("FTB") has filed a claim in the  
12 amount of \$3,005.14 for corporate income taxes of \$800 per year  
13 plus interest and penalties for tax years 2008, 2009 and 2010.

14                   **V.     SUMMARY OF THE PLAN OF REORGANIZATION**

15           **A.     Goal and Funding of the Plan**

16           By the Plan Debtor seeks to satisfy creditor claims. The  
17 Plan is a contract between the Debtor and its creditors and  
18 interest holders, and therefore is binding on the parties. To  
19 become effective the Plan must be accepted by the vote of at  
20 least one class of creditors whose claims are impaired, and the  
21 Plan must be confirmed by order of the Court.

22           **B. Funding of the Plan:**

23           Funding of the payments to Class 1 will come from funds  
24 Debtor will raise from its principal. Debtor's principal will  
25 inject funds necessary to make the payments to Class 1. Debtor's  
26 principal, Katherine Brugnara, holds an undivided community  
27 property interest in assets which she is informed exceed \$20  
28 million in value. Her access to those assets has been and

1 remains impeded by the federal incarceration of her husband, Luke  
2 Brugnara. Mrs. Brugnara is informed that Mr. Brugnara will be  
3 released from federal custody as soon as June 2011 or no later  
4 than December 2011. (Mr. Brugnara was sentenced to 18 months and  
5 began the sentence in June 2010.)

6 Debtor anticipates that the payment to Class 2, which is not  
7 due for four years, will come via a refinance or sale of the Real  
8 Property or the injection of funds by the Debtor's principal.  
9 Payments to the Classes 3 and 4 will come from an infusion of  
10 capital from Debtor's principal.

11 **C. Post Petition - Post Confirmation Operations:**

12 Debtor does not have "operations" as that term is normally  
13 used in a Chapter 11. Debtor will file post-confirmation  
14 quarterly reports required by the U.S. Trustee, and pay the  
15 required U.S. Trustee fees until such time as Debtor is prepared  
16 to apply for a Final Decree.

17 **D. Summary of the Plan and Classification of Claims and**  
18 **Interests:**

19 **1. Non-Classified Claims**

20 Administrative Claims: Holders of allowed administrative  
21 claims will receive payment of their claims in full on the  
22 Effective Date or within ten days from the date the claim becomes  
23 an allowed administrative claim, whichever occurs later unless  
24 the Debtor and administrative creditor agree to other less  
25 favorable treatment. Debtor does not anticipate there being  
26 administrative claims other than the tax claim of the FTB (which  
27 has been partially paid by Debtor's principal) and the attorney's  
28 fees of its counsel. Debtor's best estimate at this time is that

1 the administrative claims for its counsel will be \$20,000 and the  
2 balance of the FTB's claim will be less than \$1,500. Debtor's  
3 counsel received a pre-petition retainer of \$7,000 from Katherine  
4 Brugnara.

5 **2. Classified Claims:**

6 **Class 1 - Secured Claim of Wachovia:** Class 1 consists of the  
7 allowed secured claim of Wachovia which is secured in first  
8 position against Debtor's real property located at 224 Sea Cliff  
9 Avenue, San Francisco, California. The Class 1 claim is  
10 impaired.

11 **Class 2 - Secured Claim of Jorei Enterprises, LLC:** Class 2  
12 consists of the allowed secured claim of Jorei, which claim is  
13 secured in second position against Debtor's real property located  
14 at 224 Sea Cliff Avnue, San Francisco, California. The Class 2  
15 Claim is unimpaired.

16 **Class 3 - Secured Claim of the City and County of San**  
17 **Francisco:** Class 3 consists of the claim of the City and County  
18 of San Francisco, secured by the real Property. The Class 3  
19 claim is unimpaired.

20 **Class 4 - Claims of all General Unsecured Claims:** Class 4  
21 consists of the allowed general unsecured claims. The Class 4  
22 claims are impaired.

23 **Class 5 - Interests of Debtor's Interest Holder:** Class 5  
24 consists of all holders of interests in the Debtor.

25 **VI. TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS**

26 Holders of the Classified Claims and interests described  
27 above shall receive distributions as set forth below in full  
28 satisfaction of such Allowed Claims or interests. In no event

1 shall the holder of an Allowed Claim receive a distribution of a  
2 value greater than 100% of the amount of such allowed claim.

3 **Class 1 - Secured Claim of Wachovia:** The allowed Class 1  
4 claim shall have two treatment options from which to select.  
5 Under Option A the claim will be deemed a \$5,000,000 claim as of  
6 the Confirmation. The claim shall accrue interest at 4% per  
7 annum. Payments shall be interest only and the debt shall be due  
8 in full 10 years from the Confirmation. Under Option B, the  
9 claim will be allowed in the amount of \$6,140,000, and shall  
10 accrue interest at 3% interest only, due in 10 years. Under  
11 Options A and B, the loan shall be deemed reinstated upon  
12 Confirmation. If the Class 1 claim does not select an option  
13 (selection must be made on or before the voting deadline on the  
14 plan) it will be deemed to have selected Option A.

15 The right to payments under either option shall begin  
16 accruing on the Effective Date. Payments shall commence in the  
17 month of March 2012; on March 15, 2012 all payments due on or  
18 after the Effective Date shall be made on the allowed claim.  
19 Payments shall be due by the 15<sup>th</sup> of each month and shall be  
20 deemed late if not paid by the 25<sup>th</sup> of each month. The Class 1  
21 creditor is impaired.

22 **Class 2 - Secured Claim of Jorei Enterprises, LLC:** The  
23 allowed Class 2 claim shall be treated pursuant to the terms of  
24 the settlement agreement between Debtor and Jorei. Pursuant to  
25 that agreement the claim shall be due in four years and shall not  
26 accrue interest except as provided in the settlement agreement.  
27 The Class 2 creditor is not impaired.

1           **Class 3 - Secured Claim of the City and County of San**

2 **Francisco:** The allowed Class 3 claim shall be paid in full in  
3 three equal installments, due on March 15, 2012, May 15, 2012 and  
4 July 15, 2012. The allowed Class 3 claim shall retain all rights  
5 and remedies regarding any delinquent property taxes owed by the  
6 Debtor. The Class 3 claim is unimpaired.

7           **Class 4 - Claims of all General Unsecured Claims:** Class 4  
8 consists of the allowed general unsecured claims of all  
9 creditors. Class 4 claimants will receive a pro rata share of  
10 \$1,000 to be distributed three months from the Effective Date.  
11 The Class 4 creditors are impaired.

12           **Class 5 - Interests of Debtor's Interest Holder:** Class 5  
13 consists of all holders of interests in the Debtor. Class 5  
14 interest holders will not receive any distributions under the  
15 plan. Their interests, however, will not be canceled and holders  
16 will retain their interests. Class 5 is not impaired under the  
17 Plan.

18                   **VII. MEANS FOR IMPLEMENTATION OF THE PLAN**

19           **A. Funding of the Plan:** As noted above, funding of the  
20 payments to Class 1 will come from funds Debtor will receive from  
21 its principal. Debtor's principal will inject the funds  
22 necessary to make the payments to Class 1. Debtor anticipates  
23 that the payment to Class 2, which is not due for four years,  
24 will come via a refinance or sale of the Real Property or from  
25 capital contributed by Debtor's principal. Payments to the Class  
26 3 and 4 creditors will come from an infusion of capital from  
27 Debtor's principal.  
28

1           **B. Distribution of Funds:** The Disbursing Agent will  
2 distribute funds on account of the allowed claims pursuant to the  
3 terms of the Plan. The Disbursing Agent shall also be  
4 responsible for reserving amounts for payment of any disputed  
5 claims until such time that the disputed claims are either  
6 disallowed or become allowed claims.

7           **C. Post-Confirmation Operations and Administration:** Until  
8 such time as a Final Decree is entered the Reorganized Debtor  
9 will file the necessary post-confirmation operating reports and  
10 pay any required fees to the U.S. Trustee. The post-confirmation  
11 members/officers of the Reorganized Debtor shall be Katherine  
12 Brugnara. Professional fees and costs incurred post-confirmation  
13 in connection with implementation of the Plan shall be paid in  
14 the ordinary course of business and without the need of review or  
15 approval by the Court.

16           **D. Objections to Claims:** The Reorganized Debtor will have  
17 the right and standing, but not the obligation to:

18           1. Object to, contest and litigate to Final Order  
19 (including the exhaustion of any appeals) the allowance of any  
20 claim, whether or not such claim is listed in the Debtor's  
21 Schedules as disputed, contingent or unliquidated; or

22           2. As provided by Code Section 502(c), ask the Court to  
23 estimate any claim for the purpose of voting on confirmation of  
24 the plan by means of filing an objection to such claim. The  
25 Disbursing Agent shall also have the authority to settle,  
26 compromise, or negotiate the withdrawal of objections to Disputed  
27 Claims or the withdrawal of claims themselves.  
28

1           **E. Payment Upon Resolution of Disputed Claims:** While the  
2 Reorganized Debtor will reserve amounts for any disputed claims,  
3 the Reorganized Debtor will not make any payments to holders of a  
4 disputed claim until such disputed claim becomes an allowed claim  
5 and all counter-claims of the Debtor against the holder of such  
6 Claim have been fully resolved, either by means of a settlement  
7 or a Final Order.

8           **F. Treatment of Executory Contracts and Unexpired Leases:**  
9 All leases or executory contracts will be assumed upon  
10 confirmation of the Plan. Any lessee asserting a claim or a  
11 "cure" under any lease must file a claim within 30 days of the  
12 Effective Date.

13           **G. Income Tax Consequences of the Plan:** The Plan may give  
14 rise to tax consequences to creditors and interest holders. Each  
15 creditor and interest holder is urged to consult with his, her or  
16 its own tax advisor regarding the federal, state and local tax  
17 consequences of the Plan. Holders of allowed claims will  
18 cooperate with the Reorganized Debtor to the extent the  
19 Reorganized Debtor requires said holders to provide tax  
20 information in connection with their receipt of Disbursements  
21 under the Plan.

## 22                           **VIII. THE PLAN CONFIRMATION PROCESS**

### 23           **A. Confirmation Standards:**

24           For the Plan to be confirmed, the Court must determine that  
25 the requirements of Code Section 1129 have been satisfied. Among  
26 other things, Code Section 1129 requires at least one class of  
27 claims that is impaired under the Plan to have voted to accept  
28 the Plan.



1           **B.     Classification of Claims:**

2           The Code requires that a plan of reorganization place each  
3 claim in a class with other claims that are "substantially  
4 similar". Generally speaking, each secured claim is separately  
5 classified and claims are grouped based on their relative  
6 priority or similarity. Debtor believes that the classification  
7 system set forth in Plan and described in this Disclosures  
8 Statement meets the requirements of the Code.

9           **C.     Creditor Acceptance - Voting on the Plan:**

10          In order for the Court to determine that the Plan has been  
11 accepted, two-thirds in amount and a majority of the number of  
12 allowed claims in each impaired class of creditors voting on the  
13 Plan must vote to accept the Plan. Only the votes of holders of  
14 allowed claims will be counted unless the Court orders otherwise.  
15 In order to vote a holder of a claim must complete and sign the  
16 ballot provided along with the Disclosure Statement and Plan and  
17 mail it to Debtor's counsel: Law Office of Joel K. Belway, P.C.,  
18 235 Montgomery Street, Suite 668, San Francisco, California  
19 94104. The date by which the ballots must be received is set  
20 forth in the Notice accompanying the Disclosure Statement and  
21 Plan. If a class that is impaired under the Plan votes to not  
22 accept the Plan, Debtor will seek confirmation under Code Section  
23 1129(b), which is discussed below in the section entitled  
24 "Cramdown of the Plan".

25          **D.     Best Interest Test:**

26          Notwithstanding acceptance of the Plan by creditors, Code  
27 Section 1129(a)(7) requires the Court to independently determine  
28 that the Plan is in the best interest of holders of Allowed

1 Claims whose Claims are part of an impaired class. The "best  
2 interest" test requires that the Court find that the Plan  
3 provides to each member of an impaired class of claims a recovery  
4 that has a present value at least equal to the present value of  
5 the distribution that each claim holder would receive from the  
6 Debtor if the Debtor were liquidated through a Chapter 7  
7 proceeding.

8 Debtor believes that the best interests of creditors are  
9 served by Confirmation of the Plan. No greater benefit could be  
10 achieved by the secured and unsecured creditors under Chapter 7.  
11 The Plan provides for full payment of principal due at present  
12 day value to all secured and unsecured creditors. It also  
13 preserves the appreciation and capital investment of the Debtor  
14 which would be lost under Chapter 7.

15 **E. Feasibility of the Plan:**

16 As a condition to Confirmation the Court must find that  
17 Confirmation is not likely to be followed by liquidation or the  
18 need for further reorganization. The Court must therefore find  
19 that the Plan is feasible. Debtor contends its Plan is feasible.  
20 If the Plan is confirmed, Debtor will cure and reinstate the  
21 Class 1 claimant, and would have four years to pay Class 2  
22 through a sale or refinance at a time when the value of the Real  
23 Property would support such an effort. With respect to payments  
24 to Class 3, Debtor's principal will inject funds required to make  
25 such payments.

26 **F. Modification of the Plan:**

27 Debtor may modify the Plan at any time before Confirmation.  
28 In the event of a modification to the Plan, the Court may require

1 Debtor to provide notice of the modification. Any holder of a  
2 claim that has accepted or rejected the Plan prior to  
3 modification, will be held to have accepted or rejected the  
4 modified Plan unless, the Court determines that the holders of  
5 the claims should be granted additional time to change the  
6 previous vote, and the holder does in fact change his, her or its  
7 vote.

8 **G. Cramdown of the Plan:**

9 Section 1129(b) of the Code permits a Debtor to confirm a  
10 Plan even if one or more classes of claimants does not accept the  
11 Plan. In the event that an impaired class fails to accept the  
12 Plan, Debtor intends to seek Confirmation by way of a cramdown  
13 pursuant to Code Section 1129(b). In order for Debtor's Plan to  
14 be confirmed, the claims in the impaired class that voted to  
15 reject the Plan must receive treatment that is "fair and  
16 equitable" as that term is described in Code Section 1129(b)(2).  
17 Debtor believes it will be able to satisfy this requirement if  
18 necessary.

19 **IX. EFFECT OF CONFIRMATION**

20 **A. Revesting:**

21 Except as otherwise provided by the Plan, Confirmation revests  
22 all property of the estate in the Reorganized Debtor.

23 **B. Discharge:**

24 Confirmation of the Plan shall bind all holders of claims and  
25 interests, whether or not they accept the Plan. Confirmation of  
26 the Plan will discharge Debtor from all debts pursuant to Code  
27 Section 1141(d)(1). Upon Confirmation, all holders of claims and  
28 interests shall be precluded from asserting any further claim

1 against the Debtor's assets or against the Reorganized Debtor to  
2 the extent any such claim is based upon any occurrence or  
3 transaction or other activity occurring prior to the Confirmation  
4 date.

#### 5 **X. MODIFICATION OF THE PLAN**

6 Debtor may modify the Plan at any time before Confirmation.  
7 In the event of a modification to the Plan, the Court may require  
8 Debtor to provide notice of the modification by way of additional  
9 disclosures to the creditors and interest holders. Any holder of  
10 a claim that has accepted or rejected the Plan prior to  
11 modification, will be held to have accepted or rejected the  
12 modified Plan unless the Court determines that the holders of  
13 claims should be granted additional time to change the previous  
14 vote, and the holder does in fact change his, her or its vote.

#### 15 **XI. JURISDICTION RETAINED BY THE COURT**

16 Until the Case is closed, the Court shall retain  
17 jurisdiction under 28 U.S.C. Sections 1334 and 157 over the  
18 estate in any proceedings arising in the Case, arising under the  
19 Code, or related to the Case in order to carry out the  
20 provisions, purposes and intent of the Plan or any modification  
21 thereto, including:

- 22 A. Modification of the Plan under Code Section 1127(b);
- 23 B. Interpretation of the Plan;
- 24 C. Entry of orders to implement or enforce the Plan;
- 25 D. Determination of the allowability and amount of claims;
- 26 E. Determination of the Debtor's or the estate's tax
- 27 liability as necessary;
- 28

1 F. Approval of the assumption, assignment or rejection of  
2 any executory contract or unexpired lease of the Debtor  
3 to the extent such assumption, assignment or rejection  
4 has not occurred prior to Confirmation;  
5 G. Awarding compensation or reimbursement of professionals;  
6 H. Adjudicating controversies, including those involving  
7 Retained Claims; and  
8 I. Entry of a decree and order closing the Case.

9  
10 Dated: May 11, 2011

BRUGNARA PROPERTIES VI

11  
12 By: /s/ Katherine L. Brugnara

KATHERINE L. BRUGNARA

13 Its: President  
14

15 Dated: May 11, 2011

THE LAW OFFICE OF JOEL K. BELWAY  
Professional Corporation

17 By: /s/ Joel K. Belway

18 JOEL K. BELWAY

19 Attorney for Debtor  
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